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No. 96-1184

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

DEXTER J. KAMILEWICZ, *et al.*,
Petitioners,

v.

BANK OF BOSTON CORPORATION, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether certiorari is warranted to review the decision of the court of appeals below that members of an opt-out state court class action that resulted in settlement may not collaterally attack the settlement in federal court by filing an alternative class action raising RICO, section 1983, and other claims, in the novel and unusual circumstances where:

- the federal class action plaintiffs deliberately bypassed their right to opt out of or object to the state class action settlement;
- the state court made three separate determinations that the jurisdictional requirements of *Phillips Petroleum Co.* v. *Shutts*, 472 U.S. 797 (1985), were met;
- prior to approving the settlement the state court heard and rejected the same allegations now before the federal court and considered and rejected those allegations a second time by treating the federal class action as a suit to invalidate the settlement under state law;
- in accordance with state law the state court retained jurisdiction over the class action; and
- litigation of the federal class action would require the federal court to review the state court class action proceedings and settlement in plain derogation of this Court's precedents, principles of res judicata, and the respect federal courts typically are required to accord the judgments of the co-equal state courts.

RULE 29.6 STATEMENT

Respondent Bank of Boston Corporation notes that it has three nonwholly owned subsidiaries: (1) Boston Equiserve, Inc., which is 50% owned by Bank of Boston and 50% owned by State Street Bank; (2) Thor Credit Corporation, which is 50% owned by Bank of Boston and 50% owned by Thor Industries (a publicly-traded company); and (3) HomeSide, Inc.

HomeSide—the successor to respondent BancBoston Mortgage Corporation—is also partly owned by Barnett Bank, N.A., and private investors; a portion of its stock is publicly-traded. HomeSide has no nonwholly owned subsidiaries.

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BRIEF IN OPPOSITION

Respondents Bank of Boston Corporation, BancBoston Mortgage Corporation, T. Thomas Cottingham, and Burr & Forman L.L.P. respectfully request that the Court deny the petition for a writ of certiorari seeking review of the decision of the United States Court of Appeals for the Seventh Circuit in this case.

INTRODUCTION

As petitioners' own *amici* observed below, and as is apparent from even a cursory review of the convoluted procedural history below, this is a case characterized by "unusual" facts (App. A7), presenting novel questions of law that—perhaps not surprisingly in view of the peculiar circumstances in which they have arisen—are far better suited for a law school examination than for plenary review by this Court.

None of the factors traditionally warranting plenary review is present. Neither petitioners nor Judge Easterbrook (who all but conceded as much) has identified a genuine conflict of authority. Indeed, as far as we are aware, the court of appeals below is the first to have been presented with the particular form of collateral attack on a state court class action judgment waged by petitioners here. The court's decision that petitioners are *not* free deliberately to bypass state court and to attack the class action judgment in federal court comports with this Court's precedents—including *Hansberry* v. *Lee*, 311 U.S. 32 (1940)—as well as the respect traditionally accorded judgments of co-equal state courts. The result below also comports with numerous other circuit decisions—not cited by petitioners—applying the *Rooker-Feldman* doctrine in more conventional settings.

In view of the unusual circumstances precipitating this action, we doubt that the questions presented will recur soon or often. But if they do, this Court almost certainly would benefit from further deliberation by the lower courts and the joining of issues that comes only with the development of a true conflict. Important jurisprudential concerns also weigh in favor of denying the writ. If adopted, petitioners' position would grant a "free pass" to hundreds of thousands of individuals who are members of state court class actions to sit out the state round of their class action (while not actually availing themselves of the right to opt out) and—if they are unhappy with any aspect of the eventual judgment—to attack the state court judgment in federal court in the guise of "dressed up" (App. A5, A31) RICO and section 1983 claims. This free pass, moreover, would come at the expense of the black letter rule that litigants may not collaterally attack state court civil judgments in the lower federal courts, profoundly affecting both the orderly administration of claims and comity.

The conclusion that the writ should be denied is all the more easy to reach in light of the facts that petitioners

deliberately sat on their opt-out and objection rights in state court; the state court, in any event, carefully considered and rejected—on two separate occasions—the same allegations that petitioners seek to present to the federal courts; the state court determined—on three separate occasions—that the due process requirements of *Phillips Petroleum Co.* v. *Shutts*, 472 U.S. 797 (1985), were satisfied; and the state court retained jurisdiction to modify or set aside the class action judgment through the time petitioners filed in federal court. Petitioners seek to gloss over all this; Judge Easterbrook, who did not have the benefit of sitting on the panel, misunderstood important aspects of the state court proceedings and judgment.

There is, in short, no conventional reason for this Court to grant plenary review, and the petition should be denied.

COUNTERSTATEMENT

The Hoffman litigation. In 1991, a class action styled *Hoffman* v. *BancBoston Mortgage Corp.* was filed in Alabama state court by two Alabama residents on behalf of all persons whose mortgages were serviced by respondents Bank of Boston Corporation and BancBoston Mortgage Corporation. The *Hoffman* plaintiffs' central allegation was that Bank of Boston and BancBoston (collectively, "the Bank") "require[d] the class members to deposit [in their mortgage escrow accounts] substantially more than the sums for which their mortgages provide, thereby exacting the use of large amounts of money to which they are not entitled." Amended Complaint ¶ 1, *Hoffman* v. *BancBoston Mortgage Corp.*, No. CV-91-1880-Z (Mobile Cty. Cir. Ct.).[1] "After much arm's length and

[1] Judge Easterbrook's statement that the *Hoffman* plaintiffs' contention was that the Bank "did not promptly post interest to real estate escrow accounts" (App. A36) reflects a serious misunderstanding of *Hoffman*, perhaps due to the fact that he was not on the panel that heard and decided this case. *Cf.* App. A2 (panel opinion describing *Hoffman* suit as "challeng[ing] the manner in

good faith bargaining," Order of Settlement Approval and Final Judgment ("Approval Order") at 2, the parties reached a tentative settlement in November 1993 and the court granted preliminary approval of a Consent Decree embodying the terms of the settlement. *Id.* at 3. In so doing, the court confirmed the class as one in which class members had the right to opt out. Consent Decree ¶ 3 (finding Ala. R. Civ. P. 23(b)(3) applicable).[2]

In December 1993, a notice of the proposed settlement —specifically approved by the court—was mailed to class members and published for two days in *USA Today*. Approval Order at 3. The notices both announced that a hearing would be held to determine whether the settlement was "fair, reasonable and adequate" and explained the terms of the settlement. Notice of Hearing on Proposed Settlement of Class Action ("Settlement Notice") at 1, 2-6; *see* Consent Decree at 4. Under the heading "**RIGHT TO EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS**," the notices explained that each class member had the right to opt out of the case and provided a form for that purpose. Settlement Notice at 8 (emphasis as in original); *see* Approval Order at 3. Although some 415,000 notices were mailed, only about 1,500 class members elected to opt out. Approval Order at 4.[3] The notices explained that class counsel's fee re-

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which BancBoston calculated the amount of surplus each member of the class was required to maintain in their escrow accounts"). Judge Easterbrook's misunderstanding also led him dramatically to understate the value of the settlement to the *Hoffman* class. *See infra* note 4.

[2] Accordingly, petitioners' repeated suggestion that the *Hoffman* class members were denied "an opportunity to opt out," Pet. 1, 2, is simply wrong.

[3] A sample of those who opted out was contacted to determine their reasons for doing so. "Most of the persons contacted who requested exclusion did not wish to participate in any type of class action litigation or did not feel that BancBoston had handled their individual account improperly." Approval Order at 4.

quest would be considered at the fairness hearing; that the fee award would be based on the economic benefit to the class of the settlement (and would not exceed one-third of that benefit); and that the fees would be paid out of each class member's escrow account. Settlement Notice at 5; *see* App. A5; *cf.* App. A82.

The court held a fairness hearing on January 10 and 11, 1994, during which the court received evidence and heard argument regarding both the settlement and attorneys' fees. App. A109. A representative of the Florida Attorney General—who had been allowed to intervene for the purpose of objecting to the settlement on behalf of absent class members—participated extensively in the hearing, *see* Tr. of Jan. 10-11 Hrg. at 14-15, 22-34, 43-46, 71-91, 93-120, and also submitted a post-hearing brief opposing the settlement and fee request. App. A114. Following the hearing, and after considering the report of a special master appointed to review the settlement, the court approved the settlement and awarded attorneys' fees to class counsel. *Id.* at A109-A110.

A major component of the relief won by the class in the settlement was prospective. The settlement called for the Bank to change its methodology for calculating escrow account deposit requirements so that mortgagors would be able to maintain lower account balances—an average of 19% lower. Approval Order at 6, 8. The court found in the Approval Order that this prospective relief was the "principal benefit" of the settlement and "the most that could be maximized from this case even if the case had progressed to a very favorable jury verdict." *Id.* at 6, 9. The settlement also called for the Bank to refund to each mortgagor or credit his account with any surplus escrow funds resulting from the change in the Bank's accounting methodology. *Id.* at 6. At the time of settlement, it was expected that the change in the Bank's accounting methodology would result in approximately $42 million in refunds, *see* Tr. of Jan. 10-11 Hrg. at 95-98; some $30 million was actually refunded. Finally, the

Bank was to pay a small amount of interest to certain class members. Approval Order at 6-7.[4]

The court awarded attorneys' fees equal to 28% of the amounts refunded to the class due to the change in accounting methodology, which fees were to be deducted from the mortgagors' escrow accounts. *Id.* at 13-14.[5] The court considered the Florida Attorney General's suggestion that the Bank should be made to pay class counsel's fees but rejected it, in part out of ethical considerations. *Id.* at 10.[6]

The court approved the settlement on January 24, 1994, and entered a Consent Decree which made the settlement its final judgment in the case. No appeal from the court's final judgment was taken by any party.

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[4] Judge Easterbrook's assertion that under the settlement "the maximum award to any class member was less than $9" (App. A36) reflects only the Bank's *interest* payments and completely ignores the substantial economic benefit to the class of the prospective relief—which the Alabama court found to be the "principal benefit" of the settlement (Approval Order at 6)—and the refunds obtained from the Bank. That the interest payments would be modest in comparison to the other forms of relief secured by the settlement was known at the time of settlement. *See id.* at 6-7.

[5] Petitioners object to the fact that the settlement based attorneys' fees on the amount of refunds received by the class, suggesting that on the particular facts the court erred in viewing the total amount of the refunds as an economic benefit. That fact-specific question plainly does not warrant review, and, in any event, the court reduced the one-third amount requested by class counsel to 28% and applied the 28% figure only to the refunds—not to any amount representing the economic benefit of the prospective relief or to the interest payments received by the class.

[6] When an attorney tries to negotiate a settlement that would include payment of fees by the opposing party, a conflict of interest between the attorney and his client will arise in two situations: first, where the opposing party offers to settle on the cheap but pay high fees and, second, where the opposing party offers a valuable settlement but very low fees. *See* Approval Order at 10; Tr. of Jan. 10-11 Hrg. at 61-62.

The Kamilewicz Suit. Petitioners were members of the *Hoffman* class. It is undisputed that they received the court-approved notice of the settlement and their right to opt out. They elected not to opt out of that class (as 1,500 others did) or to file any objection to the settlement (as 200 others did). Approval Order at 4. Rather, they elected to pursue an altogether different course.

On November 2, 1995, petitioners filed a class action of their own against the Bank and the lawyers on both sides of the *Hoffman* case in federal district court in Illinois, seeking to overturn the settlement approved by the Alabama court. Petitioners essentially alleged that the Bank and its counsel conspired with counsel for the plaintiff class to deceive class members and the Alabama court regarding the economic benefit of the settlement so that class counsel could recover excessive fees. In their complaint, petitioners asserted numerous far-reaching causes of action, including federal racketeering and civil rights violations, as well as common law claims of fraud, conversion, malpractice, and breach of fiduciary duty. Respondents moved to dismiss the case on the ground that petitioners were barred from collaterally attacking the state court judgment in federal court by this Court's *Rooker-Feldman* doctrine,[7] as well as by res judicata and collateral estoppel principles. App. at A26-A27.

While that motion was pending, on November 22, 1995, class counsel in *Hoffman* moved the Alabama court for an order directing petitioners to show cause why they were not bound by the settlement.[8] On December 4,

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[7] *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals* v. *Feldman*, 460 U.S. 462 (1983), lend their names to this doctrine.

[8] In the Consent Decree, the Alabama court had expressly "retain[ed] jurisdiction of this action for the purpose of issuing any and all orders or decrees as may be necessary to effectuate, clarify, modify, or enforce the purpose, intent and terms of this Consent Decree." Consent Decree ¶ 20. *See* App. A12, A107.

1995, the Alabama court granted the motion and ordered petitioners to appear for a hearing later that month. The order indicated that at the hearing petitioners would be "given the opportunity to present evidence and testimony in support of their allegations." *Id.* at A112. On the day of the hearing, December 18, 1995, petitioners dispatched an attorney to inform the Alabama court that they would not be present. The hearing resulted in the issuance of an order on January 30, 1996. *Id.* at A106-A117.

In the January 30 order, the Alabama court explained that it had treated petitioners' action in federal court as an "independent action" under Alabama Rule of Civil Procedure 60(b) to set aside the settlement. *Id.* at A111. The Alabama court first rejected petitioners' contention that it lacked personal jurisdiction over them, noting that this was the third time it had found jurisdiction over out-of-state class members. *Id.* at A113 & n.1. The court reasoned that, under *Phillips Petroleum Co.* v. *Shutts*, 472 U.S. 797 (1985), petitioners—as members of the *Hoffman* class—were subject to the jurisdiction of the court because the class members (1) received the best possible notice of the action; (2) were provided an opportunity to be heard; (3) had the option to opt out of the class; and (4) were adequately represented. App. A113.

The court then explained that it had

> reexamine[d] the evidence presented at the Fairness Hearing as well as the pleading[s] filed in the *Hoffman* case and the proceedings prior to the Fairness Hearing. Having freshly reviewed that evidence, those pleadings, and the prior proceedings, this Court finds no evidence of fraud on this Court as alleged by [petitioners]. Additionally, this Court finds that the substance of [petitioners'] arguments concerning "economic benefit" and the possible "net loss" to some class members was raised, argued and briefed by the Florida Attorney General's office. Therefore, these

> arguments have already been fully adjudicated and decided by this Court. [*Id.* at A114.[9]]

The court also reaffirmed that class counsel had adequately represented the class throughout the litigation. *Id.* The court therefore reapproved the settlement in its entirety. *Id.*

On December 15, 1995, the federal district court, relying on respondents' *Rooker-Feldman* defense, held that petitioners were barred from collaterally attacking the state court class action judgment in the manner attempted. The court observed that "[e]ven though their request for relief is dressed up as damages under RICO, section 1983, or for attorney malpractice, the plaintiffs are asking us to undo what the Alabama court did, and that constitutes a[n] impermissible collateral attack upon the state court judgment." *Id.* at A31. The court explained that dismissal "does not leave [petitioners] without a remedy," given the availability of relief in the Alabama state court. *Id.* at A33. The district court noted that it had "considerable trouble understanding why [petitioners] should not receive fair treatment in that court." *Id.* at A32 n.3.

A unanimous panel of the Seventh Circuit affirmed. The court explained that because petitioners' "federal claims are 'inextricably intertwined' with the state court judgment, whether that judgment is right or wrong," the case had to be dismissed under *Rooker-Feldman*. *Id.* at A13.[10] The court thereby rejected petitioners' "far-reaching proposed exception" to *Rooker-Feldman*, which

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[9] The court pointed out that "the class unquestionably received a benefit" in that the settlement required the Bank to change its escrow balance accounting methodology to one that required lower balances on average. App. A115 n.3.

[10] Respondents argued in the Seventh Circuit that dismissal was required not only by *Rooker-Feldman* but also by the doctrine of res judicata and because of the Consent Decree entered in *Hoffman*. *See* Respondents' C.A. Br. 16-45. The result below may be defended on any of these grounds.

would allow collateral attack in federal court upon a state court judgment allegedly entered in violation of due process. *Id.* at A10. The court also observed that

> the proper court for an assertion of fraud in the procurement of a judgment is the one which rendered the judgment. * * * Alabama has a procedure by which a litigant can assert an independent action for fraud upon the court within three years of the entry of the fraudulently induced judgment. In addition, the Alabama court retained continuing jurisdiction over the class action. It is not for the federal court to decide these issues. [*Id.* at A11, A12 (citing Ala. R. Civ. P. 60(b)).]

The Seventh Circuit denied rehearing and rehearing en banc. Judge Easterbrook and four other judges dissented from the denial of rehearing en banc.

REASONS FOR DENYING THE WRIT

I. THE DECISION BELOW IS THE ONLY CASE OF ITS KIND AND CONFLICTS WITH NONE OF THIS COURT'S DECISIONS OR ANY OTHER COURT OF APPEALS DECISION.

1. The principal issue in this case arises from a rare intersection between the *Rooker-Feldman* doctrine—*i.e.*, the well-established rule that lower federal courts may not review state court judgments—and other legal principles unique to the class action context. The Seventh Circuit's application of *Rooker-Feldman* in the unusual factual setting of this case conflicts with no case decided by this Court or any other court of appeals. Indeed, one will read the petition in vain for a citation to any other case where the same issue was raised—let alone decided differently—on similar facts.[11] For these reasons alone, cer-

[11] Petitioners themselves acknowledged below that "no court before now ever has applied the *Rooker-Feldman* doctrine to a state court judgment that seeks to bind class members in the absence of personal jurisdiction." Pet. Reh'g Reply at 3. To complete the

tiorari should be denied. This Court does not sit to review cases which, like Haley's Comet, create a commotion but appear with the utmost infrequency and collide with nothing.

Petitioners' own *amici* in the court below aptly described the case as involving "unusual circumstances." App. A7; C.A. Brief *Amici Curiae* of the Attorneys General of New Hampshire, *et al.*, at 2. Petitioners were members of an opt-out class action in Alabama state court. Despite receiving notice of the proposed settlement, they neither exercised their right to opt out nor objected to the settlement. Instead, after the settlement was confirmed, they installed themselves as the named plaintiffs in a class action alleging that the Alabama defendants and their lawyers conspired with class counsel to perpetrate a fraud on the Alabama court and the members of the plaintiff class—an allegation that the Alabama court has actually considered and rejected. Although the Alabama court satisfied itself as to its jurisdiction under *Shutts* (three different times), petitioners allege that that court never had jurisdiction over them. And although the Alabama court expressly retained jurisdiction over the settlement, petitioners deliberately bypassed that available forum and instead filed their own class action in federal court in Illinois. Petitioners now assert an entitlement to a federal forum in which to impugn the judgment of the Alabama court.

2. Not surprisingly given the unusual circumstances in which this case has arisen, petitioners are unable to identify a single conflict of authority warranting this Court's review. Petitioners allege a conflict with only one other circuit on the first question they present for review, *see* Pet. 25, and even there the alleged conflict fails to pan out. Petitioners cite only two cases, *Gauthier* v. *Continental Diving Serv., Inc.*, 831 F.2d 559 (5th Cir.

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thought, no court has *declined* to apply the *Rooker-Feldman* doctrine in such circumstances.

1987), and *Davis* v. *Bayless*, 70 F.3d 367 (5th Cir. 1995). Neither case even involved a class action, so neither opinion addressed the legal question petitioners seek to raise against the factual backdrop directly pertinent to a proper resolution of that question: whether plaintiff class members who declined to opt out of state court class proceedings may attack collaterally the state court judgment in federal court, when the state court had retained jurisdiction, afforded the class members an available means to seek relief from the judgment, and specifically addressed and adjudicated the claims the class members sought to raise collaterally in federal court.

Gauthier simply held that *Rooker-Feldman* did not "require a federal court to give greater deference to a state court judgment than a court of the state in which the judgment was rendered would give it." 831 F.2d at 561. Certainly another Alabama court would defer to the state court's express retention of jurisdiction in this case, *see, e.g.*, *Ex parte Liberty Nat'l Life Ins. Co.*, 631 So.2d 865, 867 (Ala. 1993) (requiring dismissal of action in which plaintiffs "were attempting to have a second circuit court review the case and reverse the orders of the first circuit court to exercise jurisdiction"), so the *Gauthier* holding is of no help to petitioners. *Davis* simply repeated the *Gauthier* holding, so it too is inapplicable on the facts of the present case. *See* 70 F.3d at 375-376.[12]

In any event, other recent Fifth Circuit decisions—not cited by petitioners—reflect an understanding and application of the *Rooker-Feldman* doctrine that is fully in keeping with the decision below. In *Liedtke* v. *State Bar of Texas*, 18 F.3d 315 (5th Cir.), *cert. denied*, 115 S. Ct. 271 (1994), for example, Liedtke was disbarred without,

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[12] Although Judge Easterbrook is no stranger to the factors prompting a grant of certiorari, the only circuit court case he was able to point to as being remotely in conflict with the panel's decision is *Davis* v. *Bayless*, App. A39, and, as discussed, that case did not even involve a class action.

he contended, notice of or opportunity to be heard in the disbarment proceeding. Much like petitioners, Liedtke argued that "his disbarment violated due process" in that he was not given a "full and fair opportunity to be heard" and hence "the judgment of the state district court should be deemed void and unenforceable." *Id.* at 317. But the Fifth Circuit affirmed the dismissal of his section 1983 suit on *Rooker-Feldman* grounds, saying that his "recourse was with the state appellate courts and thereafter the United States Supreme Court on application for a writ of certiorari, not by a complaint to the federal district court." *Id.* at 318. *See also Musslewhite* v. *State Bar of Texas*, 32 F.3d 942 (5th Cir. 1994) (affirming dismissal of collateral attack upon suspension from practice), *cert. denied*, 115 S. Ct. 2248 (1995). It is plain that petitioners would have found no relief in the *Liedtke* court. At most, then, the law in the Fifth Circuit is unsettled. The conflict, if any, between the Fifth Circuit's decisions is a matter for that court to resolve in the first instance. *See Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).

3. On the merits, petitioners attempt to ground their claim of a right to a federal forum for their collateral attack in several of this Court's cases. On examination, however, those cases fall far short of supporting their claim.

a. In *Hansberry* v. *Lee*, 311 U.S. 32 (1940), and *Richards* v. *Jefferson County*, 116 S. Ct. 1761 (1996), this Court held that it violates due process "to bind litigants to a judgment rendered in an earlier litigation to which they were not parties and in which they were not adequately represented." *Id.* at 1764. But neither case establishes that litigants who claim not to be bound by a prior state court judgment may collaterally attack that judgment in federal court. In *Hansberry*, property owners brought suit in Illinois *state* court to enforce a restrictive covenant. This Court held that the defendants in that case could challenge the enforceability of the

covenant even though the issue had been litigated in an earlier case *in Illinois state court* because "the interests of those class members who had been a party to the prior litigation were in conflict with the absent members who were the defendants in the subsequent action." *Id.* at 1767.

In *Richards*, this Court faced "the same basic question" (*id.* at 1764) as in *Hansberry* and held that a plaintiff class *in Alabama state court* was not bound by the judgment in another Alabama state court case since plaintiffs "neither participated in, nor had the opportunity to participate in" the prior case, a case as to which they were "best described as mere strangers." *Id.* at 1768 (citations and quotation marks omitted). Thus, neither *Hansberry* nor *Richards* can support a right to attack a state court judgment in *federal* court. That distinctive aspect of petitioners' claim implicates the *Rooker-Feldman* doctrine, which was not even at issue on the facts of *Hansberry* or *Richards*.[13]

b. *Phillips Petroleum Co.* v. *Shutts*, 472 U.S. 797 (1985), is of even less help to petitioners since there was but a single suit in that case. *Shutts* holds that the judgment of a state court in a class action seeking monetary relief binds an absent plaintiff so long as he receives notice plus opportunity to be heard and participate in the litigation, as well as the chance to opt out of the class, and the class representative adequately represents the

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[13] *Richards* is further distinguishable in that the first action in that case was not even a class action. Petitioners here can hardly be "described as mere strangers" to the Alabama state court proceeding, 116 S. Ct. at 1768; they were instead members of the plaintiff class in that proceeding. In addition, unlike the plaintiffs in *Richards*, petitioners here not only "had the opportunity to participate in" the Alabama court action, *id.*, they were expressly notified of that right as well as the right to opt out, and chose to exercise neither. Finally, this Court in *Richards* expressly recognized class actions as exceptions to the rule it reiterated in that case. *See id.* at 1766.

class's interests. *Id.* at 812. Here, the Alabama court ruled that these conditions were met. App. A112-A113. Nothing in *Shutts* gives petitioners the right to challenge a state court class action in federal district court.

Petitioners argue that they are not bound by the Alabama judgment under *Shutts* because the rule of that case applies only to class action plaintiffs; they assert that the settlement cost them money and therefore they were essentially defendants in the Alabama action. Pet. 15. Petitioners simply misread *Shutts*. The holding in *Shutts* that absent plaintiffs are bound by the judgment in a class action if the factors recited above are met was not predicated on the assumption that a plaintiff class faces no possibility of economic loss. Indeed, the *Shutts* court was fully aware that class members may sometimes (if rarely) be liable for fees and costs and even subject to counterclaims, *see* 472 U.S. at 810, and that an adverse judgment will result in the loss of a chose in action—"a constitutionally recognized property interest." *Id.* at 807. Under petitioners' approach, moreover, the jurisdiction of a class action court could not be determined *ex ante*; the court's jurisdiction would depend upon the results in the case.

c. *Matsushita Elec. Indus. Co.* v. *Epstein*, 116 S. Ct. 873 (1995), involved two class actions, one in state court and one in federal court, arising out of Matsushita's acquisition of another company by way of a tender offer. The first class action was filed in Delaware state court and asserted state law claims. While that case was pending, another class action was brought in federal district court in California alleging that the tender offer violated federal law. The district court denied class certification, entered summary judgment for Matsushita, and dismissed the case, whereupon the plaintiffs appealed to the Ninth Circuit. Before the Ninth Circuit could rule, the parties in the Delaware case negotiated a settlement under which all class members who did not opt out would waive all claims, including those asserted in the federal action in

California. In the Ninth Circuit, Matsushita then "invoked the Delaware judgment as a bar to further prosecution of that action under the Full Faith and Credit Act, 28 U.S.C. § 1738." *Id.* at 877. The Ninth Circuit rejected the argument but this Court reversed, holding that the Delaware judgment was entitled to full faith and credit.

Petitioners make much of the fact that in *Matsushita* this Court "never once mentioned *Rooker-Feldman*," Pet. 24, even though—they allege—the doctrine would seem to apply on the facts of that case. But petitioners read far too much into the Court's silence, for "not every silence is pregnant." *Burns* v. *United States*, 501 U.S. 129, 136 (1991) (quotation marks and brackets omitted). It is hardly surprising that this Court in *Matsushita* did not mention *Rooker-Feldman* since (1) this Court held that the Delaware judgment was entitled to full faith and credit, (2) the federal district court could not have applied *Rooker-Feldman* because it dismissed the case before the Delaware court had rendered judgment, (3) the Ninth Circuit had not addressed *Rooker-Feldman*, and (4) *Rooker-Feldman* was not within the question presented. *Cf. Deakins* v. *Monaghan*, 484 U.S. 193, 202 n.6 (1988) (refusing to consider abstention issue where it was not addressed below or within the question presented). And it was not, as Judge Easterbrook contended, "obvious * * * to all concerned" (App. A41) that *Rooker-Feldman* was inapplicable in *Matsushita*. In fact, the petitioner in *Matsushita* raised the doctrine in its brief, albeit without extended discussion. *See* Brief for the Petitioner at 35 n.29 (No. 94-1809).

4. Far from creating conflict, the Seventh Circuit's application of *Rooker-Feldman* here is in line with this Court's elaboration of the doctrine and other circuit court decisions outside of the class action context. (We are not aware of *any* other *Rooker-Feldman* cases within the class action context. *See* note 11, *supra.*) Under *Rooker-*

Feldman, the lower federal courts may not exercise "what in substance would be appellate review of" the judgment of a state court in a civil case. *Johnson* v. *DeGrandy*, 512 U.S. 997, 1005 (1994). *See Feldman*, 460 U.S. at 486 (no review of "allegations [that] are inextricably intertwined with" a state court judgment); *Pennzoil Co.* v. *Texaco, Inc.*, 481 U.S. 1, 18 (1987) (Scalia, J., concurring) (same). The doctrine is based on the understandings that this Court's jurisdiction over state court judgments under 28 U.S.C. § 1257 is exclusive, *see ASARCO Inc.* v. *Kadish*, 490 U.S. 605, 622 (1989); *Pennzoil*, 481 U.S. at 24-25 (Marshall, J., concurring in the judgment), and that the jurisdiction of federal district courts "is strictly original." *Rooker*, 263 U.S. at 416. *See* 28 U.S.C. § 1331; *cf.* 28 U.S.C. § 2254. The doctrine unquestionably applies to constitutional claims. *Feldman* itself involved a Fifth Amendment challenge brought under section 1983 to the District of Columbia Court of Appeals' refusal to waive a bar admission requirement.

Here, there can be no question but that petitioners' claims against the Bank and its counsel in *Hoffman* are inextricably intertwined with the Alabama court's judgment and amount in substance to a request for appellate review of that court's judgment—a fact recognized not only by the Seventh Circuit [14] and the district court but also by Judge Easterbrook, who acknowledged that petitioners seek "to obtain collateral review of the state court's judgment." App. A38. Petitioners do not seri-

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[14] The Seventh Circuit noted that petitioners' arguments were somewhat like "shifting sand" (App. A6) as they sought simultaneously to attack the Alabama state court judgment and avoid the application of *Rooker-Feldman*. Their argument in that court is fairly characterized as a collateral attack upon the Alabama court's judgment. *See* Petitioners' C.A. Br. at 5 (the Alabama judgment "is null and void for lack of personal jurisdiction"); *id.* at 14 ("the state court class action violated the due process rights of those plaintiffs and therefore resulted in a judgment that is null and void").

ously contend otherwise. Indeed, the thrust of their submission is not that *Rooker-Feldman* is inapplicable on the facts of this case but that the Seventh Circuit improperly "elevat[ed]" that doctrine over other considerations. Pet. 22. In other words, their complaint is that the court below refused to accept their "far-reaching proposed exception to the *Rooker-Feldman* doctrine." App. A10.

No court has accepted the argument that *Rooker-Feldman* fails to apply when the state court judgment at issue is attacked on grounds that it was entered by a court lacking jurisdiction and in violation of due process. On the contrary, the courts of appeals are in agreement that *Rooker-Feldman* applies even in that situation. For example, in *Postma* v. *First Fed. Sav. & Loan*, 74 F.3d 160 (8th Cir. 1996), First Federal filed a mortgage foreclosure action against Greta and Harold Postma in state court and obtained a judgment of foreclosure. The Postmas then filed in federal district court what was "essentially a collateral attack" (*id.* at 162) on the state court judgment, raising numerous federal and state law claims against First Federal and a mediation service. The district court dismissed the action on *Rooker-Feldman* grounds and the Eighth Circuit affirmed. On appeal, the Postmas argued that "the *Rooker-Feldman* doctrine does not apply when the plaintiff has been denied procedural due process in the state court." *Id.* Asserting that "they did not receive constitutionally adequate notice" and "were denied a fair opportunity to participate," *id.*, the Postmas claimed that they had not received important filings; that Greta had never been served and never appeared in the state court; and that Harold had not consented to the state court's jurisdiction. *See id.* at 162 n.3. But the Eighth Circuit rejected the argument, observing that "contrary to the Postmas' argument, there is no procedural due process exception to the *Rooker-Feldman* doctrine." *Id.* Federal district courts cannot hear challenges to state court decisions, the Eighth Circuit explained, "even if

those challenges allege that the state court's action was unconstitutional." *Id. See also In re Goetzman*, 91 F.3d 1173, 1178 (8th Cir.) (applying *Rooker-Feldman* to claim that state court violated due process), *cert. denied*, 117 S. Ct. 612 (1996); *Wang* v. *New Hampshire Bd. of Registration in Medicine*, 55 F.3d 698, 703 (1st Cir. 1995) (same); *Liedtke* v. *State Bar*, 18 F.3d at 317-318 (same); *MacKay* v. *Pfeil*, 827 F.2d 540, 543-545 (9th Cir. 1987) (per curiam) (applying *Rooker-Feldman* to claim that state court lacked personal jurisdiction).

II. PETITIONERS COULD—AND SHOULD—HAVE LITIGATED THEIR PRESENT CLAIMS IN STATE COURT OR EXERCISED THEIR RIGHT TO OPT OUT OF THE STATE COURT PROCEEDINGS.

1. This Court rarely grants certiorari in the absence of a direct conflict of authority, and there is no basis for doing so here. This case involves not simply an attempt collaterally to attack a state court judgment in federal court, but a federal court collateral attack on a state court judgment where the state court had expressly retained jurisdiction over the case and was prepared to hear the very claims raised in federal court. Petitioners' claim of right to a federal forum is undercut by their deliberate bypass of an available state court remedy.

This Court has indicated time and again that state courts are fully capable of adjudicating federal constitutional claims. *See, e.g., Doran* v. *Salem Inn, Inc.*, 422 U.S. 922, 930 (1975); *Swain* v. *Pressley*, 430 U.S. 372, 383 (1977); *Moore* v. *Sims*, 442 U.S. 415, 430 (1979) (this Court has "repeatedly and emphatically rejected" claims to the contrary); *Withrow* v. *Williams*, 507 U.S. 680, 723 (1993) (Scalia, J., concurring in part and dissenting in part) ("It would be a strange constitution that regards state courts as second-rate instruments for the vindication of federal rights and yet makes no mandatory provision for lower

federal courts (as our Constitution does not)."). Indeed, the Court has made just such an observation in the *Rooker-Feldman* context. *See Feldman*, 460 U.S. at 484 n.16. Thus, what this Court said 30 years ago in *Walker* v. *City of Birmingham*, 388 U.S. 307, 319 (1967), is just as true today: "It cannot be presumed that the Alabama courts would have ignored the petitioners' constitutional claims." In this case, there is no question but that petitioners could have raised their claims in the Alabama court.[15] In fact, that court *did* consider their claims in the January 30 order. App. A111-A117. Of course, after litigating their claims in state court petitioners could have sought federal court review on a petition for a writ of certiorari.

2. The Seventh Circuit's refusal to permit petitioners to bypass state court and collaterally to attack the *Hoffman* judgment in federal court is also supported by important policy considerations embraced by this Court. As an abstention doctrine, *see DeGrandy*, 512 U.S. at 1005, *Rooker-Feldman* serves to promote principles of judicial federalism. *See Quackenbush* v. *Allstate Ins. Co.*, 116 S. Ct. 1712, 1720 (1996); *id.* at 1729 (Kennedy, J., concurring) ("Abstention doctrines are a significant contribution to the theory of federalism and to the preserva-

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[15] Petitioners' failure to present their objections to the Alabama courts is even more remarkable in light of the fact that under Alabama law parties may litigate on the merits while at the same time preserving a valid personal jurisdiction defense. Thus, in *Creel* v. *Gator Leasing, Inc.*, 544 So.2d 936 (Ala. 1989), in which an out-of-state company raised a successful personal jurisdiction defense, the Alabama Supreme Court stated: "No defense or objection is waived by being joined with other defenses or objections in a responsive pleading or motion. * * * Thus, a defense of lack of personal jurisdiction over the person may be made in a motion or answer raising other defenses that formerly would have constituted a general appearance." *Id.* at 938. *See also Ex parte ACK Radio Supply Co.*, 219 So.2d 880 (Ala. 1969); *Gaudin* v. *Collateral Agency, Inc.*, 624 So.2d 631 (Ala. Civ. App. 1993).

tion of the federal system in practice."); *Growe* v. *Emison*, 507 U.S. 25, 32 (1993) (abstention doctrines based on "principles of federalism and comity"). It would do violence to these principles for a federal court to entertain a collateral attack on a state court judgment when the state court has determined that it had jurisdiction and has expressly retained that jurisdiction. Thus, dismissal of petitioners' case from federal court "is eminently defensible on policy grounds." *Feldman*, 460 U.S. at 484 n.16.[16]

After petitioners filed their federal court class action, the Alabama court directed them to show cause why they were not bound by the *Hoffman* settlement and ordered them to appear at a hearing for that purpose. Although, as the Alabama court noted, "there can be no question that [petitioners] and their counsel had actual notice of the hearing" (App. A111), they refused to appear for it. Notably, this hearing was held three days *after* the federal district court had dismissed petitioners' case and had expressly advised them that their only remedy lay with the Alabama court. *Id.* at A33. Following the hearing, in its January 30 order, the Alabama court held that petitioners "are bound by the Order of Settlement and are precluded

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[16] In the one context in which the lower federal courts *do* have jurisdiction to review state court judgments—in the *criminal* habeas corpus context—this Court has long required (even before Congress did so in 28 U.S.C. § 2254(c)) that available state process and remedies be exhausted in order to advance comity interests. *See Ex parte Royall*, 117 U.S. 241, 251 (1886); *Rose* v. *Lundy*, 455 U.S. 509, 515-516 (1982); *Keeney* v. *Tamayo-Reyes*, 504 U.S. 1, 8 (1992). Petitioners not only made no effort to exhaust the state process and remedies that were available to them, but they took the most problematic course identified by this Court—they sought a deliberate bypass of state court altogether. This is all the more astonishing given that—in addition to having the right to raise objections during the fairness hearing and to file a Rule 60(b) motion to set aside the judgment—petitioners had the right to "opt out" of the state court proceedings altogether. Yet they elected *not* to avail themselves of any of these rights.

from reasserting the claims dismissed in the Federal Class Action in any forum." *Id.* at A118. In these circumstances, the principles of comity and federalism that underlie this Court's abstention doctrines strongly support dismissal of petitioners' case.

3. Finally, even if petitioners were somehow able to surmount the *Rooker-Feldman* doctrine, they would run head-long into res judicata, which was advanced by respondents in both the district court and court of appeals below, *see* App. A26-A27; Respondents' C.A. Br. at 32-41, and provides an independent ground for denying petitioners relief. As this Court recently explained in *Matsushita,* federal courts must accord state court class action judgments the same preclusive effect to which they would be entitled in the judgment-rendering state. 116 S. Ct. at 877-878. Thus, in determining "that a Delaware court would afford preclusive effect to the settlement judgment in [*Matsushita*]," the Court relied specifically on the fact that the Delaware courts had found that the due process requirements of *Shutts* were met. 116 S. Ct. at 880. The same is true here, except the Alabama courts found on three separate occasions that these requirements were met. As in *Matsushita,* then, the state court judgment is entitled to preclusive effect.[17]

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[17] Even Justice Ginsburg, who in her separate opinion in *Matsushita* discussed the importance of the adequacy of representation requirement, *see* 116 S. Ct. at 888-890, did not maintain that a federal court in determining whether to give a state class action judgment preclusive effect could simply determine *de novo* whether the *Shutts* due process requirements—including adequate representation—had been met. To the contrary, Justice Ginsburg recognized that it was "the first line responsibility of the states themselves for assuring that the[se] constitutional essentials are met." *Id.* at 888. And, in determining whether the Delaware judgment met those requirements, Justice Ginsburg focused on whether the *Delaware* courts had in fact made a finding that the representation was adequate, *id.* at 889, as the Alabama court plainly did in the *Hoffman* action.

Petitioners' refrain that the Alabama courts lacked jurisdiction over them does not alter this conclusion. As this Court has held, "[i]t has long been the rule that principles of res judicata apply to jurisdictional determinations—both subject matter and personal." *Insurance Corp. of Ireland, Ltd.* v. *Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 n.9 (1982). The only requirement is that the matter have been fully and fairly litigated in the prior proceeding. *See Underwriters Nat'l Assurance Co.* v. *North Carolina Life & Accident & Health Ins. Guar. Ass'n*, 455 U.S. 691, 706 (1982) ("a judgment is entitled to full faith and credit—even as to questions of jurisdiction—when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment") (internal quotation marks omitted).[18] Here, it was—*three* times. *See, e.g., Stone* v. *Williams*, 970 F.2d 1043, 1057-58 (2d Cir. 1992) (giving preclusive effect to Alabama jurisdictional ruling), *cert. denied*, 508 U.S. 906 (1993); *Steph* v. *Scott*, 840 F.2d 267, 270 (5th Cir. 1988) (state court's "jurisdictional recitals were binding on the district court and rendered the [state court] judgment absolutely immune from collateral attack").[19]

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[18] This distinguishes the situation where a party seeks to challenge the entry of a default judgment against him by another court on the ground that the court lacked jurisdiction over him. There, the personal jurisdiction question is not litigated in the first action, and thus is not entitled to any preclusive effect in the second. *Cf. Covington Indus., Inc.* v. *Resintex A.G.*, 629 F.2d 730, 732 (2d Cir. 1980).

[19] Alabama law is clear that absent members of an opt-out class action settlement—who receive actual notice of the settlement and their right to be heard but decline to opt-out—may be barred under the res judicata doctrine from collaterally attacking the class action settlement on the ground that the first court lacked jurisdiction over them, so long as the first court had "at least colorable jurisdiction over the absent class plaintiffs." *See Martin* v. *Drummond Co.*, 663 So.2d 937, 948 (Ala. 1995), *cert. denied*, 116 S. Ct.

Nor, as *Matsushita* itself makes clear, does it matter that this case involves a class action. 116 S. Ct. at 880. *See also Cooper* v. *Federal Reserve Bank of Richmond*, 467 U.S. 867, 874 (1984) ("There is of course no dispute that under elementary principles of prior adjudication a judgment in a properly entertained class action is binding on class members in any subsequent litigation"). Indeed, as one court has observed, the fact that the prior action is a class action "weighs in favor of, not against, applying *res judicata*: an obvious purpose of permitting class actions is to bind members of the class." *Jamerson* v. *Lennox*, 356 F. Supp. 1164, 1169 (E.D. Pa.), *aff'd*, 414 U.S. 802 (1973). It is especially appropriate to promote that purpose where, as here, the prior action afforded class members the right to opt-out, class members were given individual written notice of that right, and the second action is brought as a collateral attack by class members who declined to exercise that right. *See Martin* v. *Drummond Co.*, 663 So.2d at 947-948.[20]

1040 (1996). Petitioners here have waged the same type of collateral attack attempted in *Martin*, except they have attempted to do so in federal rather than state court, and thus face a *Rooker-Feldman* bar as well; but their claims are in any event barred under Alabama preclusion rules. Indeed, not only did the Alabama court have "colorable jurisdiction" over petitioners in the *Hoffman* action, the court made three separate determinations that it in fact had such jurisdiction under *Shutts*.

[20] Apart from simply opting-out, petitioners had several available avenues of redress for challenging the state court proceedings and judgment. They had the right to appear at the fairness hearing and raise virtually any objection to the proceedings or judgment (including the trial court's *Shutts* determinations), and to appeal from any adverse ruling. They had the right to seek post-judgment relief under the Alabama version of Rule 60(b). *See Matsushita*, 116 S. Ct. at 890 n.11 (recognizing the availability of Rule 60(b) for challenging adequacy of representation) (Ginsburg, J., concurring in part and dissenting in part). And they had the right to seek review of the state court rulings in this Court. 28 U.S.C. § 1257. But rather than availing themselves of any of these open avenues of redress, they chose to tread down the path plainly barred by *Rooker-Feldman* and res judicata.

To the extent petitioners claim they are in a bind, it is one entirely of their own making, and one quite distinct from the dilemma faced by the plaintiffs in *Hansberry* and *Richards*. The plaintiffs in those cases came along after the first action had been litigated and sought to file an independent action against the original defendant (in the same state) only to find out that their claims had been litigated. 311 U.S. at 38; 116 S. Ct. at 1764-65. Petitioners here, by contrast, received actual notice of the prior action, as well as their right to participate in or opt out of that action. But they elected *not* to participate in or opt out of that state action and, instead, to file a separate class action in federal court. That federal action, moreover, is nothing like the independent action waged by the plaintiffs in *Hansberry* and *Richards*; it is a no-holds-barred collateral attack on the state court action petitioners deliberately sat out.[21]

Neither *Hansberry* nor *Richards* speaks to this novel situation, and, as discussed, petitioners have failed to cite any precedent, state or federal, permitting parties in *their* position to proceed with a collateral attack—especially when, as here, that attack is brought in federal court against a state court judgment. The novelty of petitioners' situation is reason enough to deny the writ. That the Seventh Circuit decision barring petitioners' collateral attack is supported by both *Rooker-Feldman* and res judicata principles provides even more reason to deny the writ, and, instead, to wait and see whether this unusual situation recurs and, if it does, whether any conflict of authority in fact develops.

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[21] *Richards* is distinguishable in another fundamental respect. The prior action in that case—unlike the *Hoffman* action here—did not involve a class action in which the Rule 23 and *Shutts* determinations had been made, and thus did not purport to bind non-parties such as the subsequent plaintiffs in *Richards*. *See* 116 S. Ct. at 1767.

III. REVIEW OF PETITIONERS' MALPRACTICE CLAIM AGAINST CLASS COUNSEL IS ALSO UNWARRANTED.

The "tag along" question presented in the petition concerns petitioners' claim of malpractice against *Hoffman* class counsel.[22] Petitioners argue that the court below erred in holding that the *Rooker-Feldman* doctrine barred them from bringing that claim in federal district court. That holding does not warrant review by this Court.

There is no conflict between the Seventh Circuit's holding and any other decision. None of the cases cited in the petition involves a malpractice action brought in federal court against class counsel in a state court class action. *Cf. Diaz* v. *Sheppard*, 85 F.3d 1502, 1505 (11th Cir.) (holding that claim of malpractice against counsel to federal court class action must be remanded to state court), *pet. for cert. filed*, 65 U.S.L.W. 3468 (Dec. 20, 1996) (No. 96-1004). Indeed, none of the cases petitioners cite even mentions the *Rooker-Feldman* doctrine.

Furthermore, petitioners are asking this Court to decide whether they may bring in federal court a state law claim that may not even exist. Attorney malpractice is, of course, a claim arising under state law. *See, e.g., Durkin v. Shea & Gould*, 92 F.3d 1510 (9th Cir. 1996) (applying California law), *pet. for cert. filed*, 65 U.S.L.W. 3611 (Feb. 24, 1997) (No. 96-1364); *Diaz*, 85 F.3d at 1505 (attorney malpractice claim, if any, arises under Florida law). Significantly, petitioners have cited no case for the proposition that a malpractice claim against class counsel can be maintained under Alabama law. Since it is unknown if petitioners may sue *Hoffman* class counsel, consideration of the question whether that hypothetical

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[22] Therefore, the underlying claim at issue in the second question presented is not directed at the Bank or respondents T. Thomas Cottingham and Burr & Forman L.L.P., the Bank's counsel in *Hoffman*.

claim may be brought in federal rather than state court is unwarranted.[23]

It is far from clear that a malpractice claim can be brought against class counsel. As Judge Logan noted in *Diaz*:

> Only one court has held that a Rule 23 class member can bring a malpractice action against class counsel. *Zimmer Paper Products, Inc.* v. *Berger and Montague, P.C.*, 758 F.2d 86 (3d Cir.), *cert. denied*, 474 U.S. 902 (1985). That case involved an alleged negligent failure to give notice to a class member; the court *denied relief* after finding that counsel had complied with court orders. In dicta the D.C. Circuit has indicated that it might recognize such a claim, citing *Zimmer Products*. *Peters* v. *National R.R. Passenger Corp.*, 966 F.2d 1483, 1487 n.3 (D.C. Cir. 1992). No case, however, has ever held class counsel liable for malpractice. [85 F.3d at 1507 (dissenting opinion; emphasis added).[24]]

A malpractice claim against class counsel is considerably different from an ordinary attorney malpractice claim, because settling a class action requires a judicial finding that the class was adequately represented. *See, e.g., Reed* v. *General Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983) ("the linchpin of an adequate settlement is adequacy of representation"). Thus, a malpractice action against class counsel necessarily implicates the class action judgment. In this case, for example, to find the *Hoffman* class counsel liable for malpractice, petitioners would have to establish that the Alabama court had erred in holding that the plaintiff class was adequately repre-

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[23] This Court recently denied a petition for certiorari filed by a plaintiff suing class counsel for malpractice. *Bennett* v. *Law Firm of Jones, Waldo, Holbrook & McDonough*, 117 S. Ct. 943 (Feb. 18, 1997) (No. 96-678).

[24] *Durkin* v. *Shea & Gould*, which was decided after *Diaz*, involved a malpractice action against counsel for the *defendants* in a class action.

sented and that the settlement (including attorneys' fees) was fair and reasonable. App. A113. It is just such considerations that led the Seventh Circuit to invoke the *Rooker-Feldman* doctrine. *Cf. Laskey* v. *International Union, UAW*, 638 F.2d 954, 957 (6th Cir. 1981) (per curiam) (class members collaterally estopped from claiming malpractice where they had the opportunity to object to the legal representation at settlement hearing and district court found that representation was adequate and that settlement was fair and reasonable).

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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